

MINUTES

ALCOHOL AND TOBACCO COMMISSION

OCTOBER 4, 2005

CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Vice Chairperson Brizzi and Commissioner Sturtz. Also in attendance were Industry Liaison Okey, Superintendent Huskey and Executive Secretary Choe.

Lisa Goldner of Bose McKinney and Evans, John Barnett, Debbie Scott of IABR, Jeff McKean, and Grant Monahan of IRC were present as observers.

DISPOSITION OF MINUTES

Vice Chairperson Brizzi moved to approve the minutes submitted for the September 13, 2005 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

PARTIES AGREED DISPOSITION (PAD) FORMS – Vice Chairperson Brizzi moved to approve the PAD forms submitted for the October 4, 2005 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

CLINTON CITGO – Hearing Judge Choe recommended to the Commission that this permittee be fined \$250.00 for violating the Cigarette Fair Trade Act.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation. Motion seconded by Commissioner Sturtz and it was unanimously approved.

BUD CARROL ENTERPRISES, INC. – Hearing Judge Choe recommended to the Commission that this permittee be fined \$250.00 for selling untaxed cigarettes.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RICHARD WALLS – Hearing Judge Choe recommended to the Commission that this employee be fined \$50.00 for selling tobacco to a minor.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation. Motion seconded by Commissioner Sturtz and it was unanimously approved.

7 ELEVEN STORE #32539 – Hearing Judge Choe recommended to the Commission that this permittee be fined \$500.00 for multiple sales of tobacco to minors and to also fine the employee \$50.00 for same violation.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation. Motion seconded by Commissioner Sturtz and it was unanimously approved.

VAN JAYS – Hearing Judge Choe stated the previous hearing judge, Mark Webb, heard this case, but did not issue a decision. This permittee was cited for violation of the Cigarette Fair Trade Act. The Hearing Judge, rather than issuing findings of fact, issued an Order of Dismissal, with four months deferred judgment, because this was a single violation with no prior violations and no violations since.

Hearing Judge Choe said that she received a letter from the attorney who represents the permittee. The attorney is challenging that fact that no findings were issued in this matter; however, there are no rules that speak to how the Commission should handle tobacco violation cases. The rules speak to alcohol matters in regard to violations or appeals, not tobacco. Those statutes state that the Commission may accept, accept with modifications, or reject the findings of the hearing judge. The attorney also thinks that the hearing judge has the power to appoint a special administrative law judge, pursuant to IC 4-21.5-27(b), he would like Mark Webb, to conduct another hearing. Hearing Judge Choe stated that she feels that the ATC falls outside that statute.

Finally, the Hearing Judge noted that the former prosecutor and hearing judge never issued findings of fact for tobacco cases because they felt that tobacco issues fall outside any ATC statutes or rules that govern this agency.

Chairman Heath moved to uphold the Hearing Judge's order and dismiss the charges with a four month deferred judgment. He also stated there would be no other hearing conducted. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL79-21223 MAC'S CONVENIENT STORE – Hearing Judge Choe recommended the Commission overturn the local board's recommendation of denial for the renewal of this permit because she felt it was arbitrary, capricious and unsupported by evidence.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation and grant this renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL28-94299 KOCOLENE MARKETING COMPANY – Hearing Judge Choe recommended the Commission overturn the local board's recommendation of denial for this new permit because she felt it was arbitrary and capricious.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved

RR27-19760 GULLEY ENTERPRISES, INC. – Hearing Judge Choe recommended the Commission remand this application to the local board for a reinvestigation, due to the fact that the applicant did not comply with the notice requirements.

Vice Chairperson Brizzi moved to uphold the Hearing Judge's recommendation and remand this application to the local board. Motion seconded by Commissioner Sturtz and it was unanimously approved.

CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

Four hundred ninety-one (491) renewals approved, sixty-four (64) new and/or transfer permits approved, nine (9) permits approved for catering, eleven (11) permits approved for first year escrow, two (2) permit approved for second year escrow and one (1) permit approved for fourth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Vice Chairperson Brizzi moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR34-03931 DAN THE MAN, LLC, D/B/A BIG DADDY'S – Chairman Heath noted this is a type 210 renewal application with the local board voting four (4) to zero (0) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR34-09754 DANNY D'S LLC, D/B/A LITTLE DADDY'S - Chairman Heath noted this is a type 210 renewal application with the local board voting four (4) to zero (0) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RC02-00201 AMERICAN LEGION POST 241 – Chairman Heath noted this is a type 211-4 renewal application with the local board voting two (2) to one (1) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL49-00686 BUY RITE, INC., D/B/A CROWN LIQUORS – Chairman Heath noted this is a type 217 transfer of location application with the local board voting three (3) to one (1) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the transfer. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR49-21939 WILLIAM J. LEE, D/B/A LEE'S NEIGHBORHOOD BAR & GRILL – Chairman Heath noted this is a new type 112 application with the local board voting four (4) to zero (0) to disapprove.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and deny the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL41-21911 KROGER LIMITED PARTNERSHIP I – Chairman Heath noted this is a new type 208-3 application with the local board voting two (2) to one (1) to disapprove.

Vice Chairperson Brizzi moved to overturn the local board's recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR02-09250 KEY LANES BOWLING CORP. – Chairman Heath noted this is a type 112 renewal application with the local board voting four (4) to zero (0) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR63-21898 & RR63-21899 ROBERT E. QUERY & DEBBY J. QUERY, D/B/A SNEAKERS PUB – Chairman Heath noted this is a new type 103 application and a new type 210-1 application with the local board voting three (3) to zero (0) to disapprove.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and deny the new permits. Motion seconded by Commissioner Sturtz and it was unanimously approved.

INACTIVE FILES

Chairman Heath stated there are seventy-one (71) permits to be made inactive. Forty-seven (47) permits are not subject to auction and twenty-four (24) permits are subject to auction.

Vice Chairperson Brizzi moved to make these permits inactive. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPEALS FROM LOCAL BOARD RECOMMENDATIONS

RR49-19184 SOL ENTERTAINMENT, INC., RR43-02891 NIGHT SHIFT OF NORTH WEBSTER, RC71-19065 VFW POST 9733, RR28-21768 TERRY GILMORE, RR46-08657 SANTIAGO'S DOS, INC. - Chairman Heath noted appeals were filed.

OLD BUSINESS

No Old Business

NEW BUSINESS

No New Business

POLICY DETERMINATIONS

No Policy Determinations

UNDER ADVISEMENT

Nothing Under Adviseement

ANNOUNCEMENTS

2005 PERMIT AUCTION – Chairman Heath stated the 2005 permit auction is scheduled November 2, 2005 at 11:00 a.m.

ADJOURNMENT

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Vice Chairperson Brizzi and it was unanimously approved.

Approved this _____ day of _____, 2005.

DAVE HEATH, CHAIRMAN

MELANIE BRIZZI, VICE CHAIRPERSON

DALE STURTZ, COMMISSIONER